

HOUSE BILL 887

By Eldridge

AN ACT to amend Tennessee Code Annotated, Title 50,  
Chapter 6 and Title 56, relative to workers'  
compensation.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 50-6-106, is amended by adding the following language as a new, appropriately designated subdivision:

( ) A person whose employer has voluntarily elected to be exempt from this chapter pursuant to part 10 of this chapter.

SECTION 2. Tennessee Code Annotated, Section 50-6-108, is amended by adding the following language as a new, appropriately designated subsection:

( ) An employee and an employee's personal representative, dependents or next of kin shall retain all rights and remedies at common law or otherwise on account of an injury or death sustained in the course and scope of employment when the employer has elected to be exempt from this chapter pursuant to part 10 of this chapter. Such employer may make use of all common law defenses in the event of an action at common law filed by the employee or the employee's personal representative, dependents or next of kin.

SECTION 3. Tennessee Code Annotated, Section 50-6-118, is amended by adding the following language as a new, appropriately designated subsection:

( ) This section shall not apply to an employer who voluntarily elects to be exempt from this chapter pursuant to part 10 of this chapter.

SECTION 4. Tennessee Code Annotated, Section 50-6-132, is amended by adding the following sentence at the end of the section:

The report shall not include the name of an employer who voluntarily elects to be exempt from this chapter pursuant to part 10 of this chapter during the preceding state fiscal year.

SECTION 5. Tennessee Code Annotated, Section 50-6-405, is amended by adding the following language as a new, appropriately designated subsection:

( ) This section shall not apply to an employer who voluntarily elects to be exempt from this chapter pursuant to part 10 of this chapter.

SECTION 6. Tennessee Code Annotated, Title 50, Chapter 6, is amended by adding the following language as a new part:

50-6-1001.

For purposes of this part, unless the context otherwise requires:

(1) "Division" means the division of workers' compensation of the department of labor and workforce development;

(2) "Employee" has the same meaning as defined in § 50-6-102;

(3) "Employer" has the same meaning as defined in § 50-6-102;

(4) "Exempt employee" means:

(A) An employee of a voluntarily exempt employer; or

(B) In the event the employee is deceased, the employee's legal representatives, dependents or other persons to whom damages may be payable due to the employee's injury or death; and

(5) "Voluntarily exempt employer" means an employer who elects to be exempt from this chapter pursuant to this part.

50-6-1002.

Notwithstanding any provisions of this chapter to the contrary, any employer doing business in this state, except a person engaged in the construction industry, a

construction services provider to which part 9 of this chapter is applicable or an employer engaged in the mining and production of coal, may voluntarily elect to be exempt from this chapter provided the employer complies with this part.

50-6-1003.

(a) Any employer who voluntarily elects to be exempt from this chapter shall:

(1) Notify the division in writing of the employer's voluntary election to be exempt from this chapter on a form prescribed by the division, file the form with the division as directed by the division and pay to the division a nonrefundable fee in the amount of five hundred dollars (\$500), which shall accompany the filing of the written notice;

(2) Provide written notice to each employee within seven (7) days of the date on which the employer files the written notice with the division of the employer's election to be exempt from this chapter or, in the event an employee is hired subsequent to the date of the employer's election to be exempt, provide written notice of the employer's election to be exempt from this chapter to each such employee within seven (7) days of the date the employee is hired; and

(3) Post a written notice in a conspicuous place, so all employees have access to the written notice, that states:

(A) The employer has voluntarily elected to be exempt from this chapter;

(B) The date upon which such election was filed with the division;  
and

(C) The name and contact information for the employer's agent who can provide information to the employee concerning any procedures

to be followed in the event the employee sustains a injury in the course and scope of employment.

(b) The employer's election to be exempt from this chapter shall be effective as of the date on which the division receives the employer's notice pursuant to subsection

(a). The division shall note the date and time each notice is received by the division in the records of the division. In addition, the division shall maintain a listing, accessible by the public, on its official web site of all employers who have voluntarily elected to be exempt from this chapter and the date and time such exemption became effective.

(c) The division shall have the authority to promulgate by rule each of the forms to be filed by the employer pursuant to subsection (a).

50-6-1004.

(a) In addition to the requirements of § 50-6-1003, an employer who voluntarily elects to be exempt from this chapter shall file with the commissioner of commerce and insurance a security bond in the amount of five hundred thousand dollars (\$500,000) issued by an insurance company that has at least a AAA rating.

(b) The security bond shall be held by the commissioner of commerce and insurance and shall be conditioned to run solely and directly for the benefit of any exempt employee of a voluntarily exempt employer.

(c) The security bond held by the commissioner of commerce and insurance may be used to pay an exempt employee the amount of damages awarded by a court or contained in a court order provided the following requirements are met:

(1) The exempt employee sustained an injury, or the exempt employee died as a result of an injury sustained, in the course and scope of his employment with the voluntarily exempt employer;

(2) The exempt employee filed a common law action in tort for damages in a court of competent jurisdiction against the voluntarily exempt employer as a result of an injury sustained in the course and scope of the employee's employment with the voluntarily exempt employer that resulted in a judgment or court order assessing a specific dollar figure for compensatory damages, punitive damages or both, against the voluntarily exempt employer; and

(3) The exempt employee is unable to collect on the judgment or court order described in subdivision (c)(2) because of one (1) of the following events:

(A) The voluntarily exempt employer had liability insurance coverage for the cause of action filed by the exempt employee against the voluntarily exempt employer but the liability insurance carrier is insolvent or has refused to pay the judgment or court order, and the voluntarily exempt employer has filed for bankruptcy and the exempt employee is listed as an unsecured creditor of the voluntarily exempt employer because of the judgment or court order described in subdivision (c)(2); or

(B) The voluntarily exempt employer did not have liability insurance coverage for the cause of action filed by the exempt employee against the voluntarily exempt employer, and the voluntarily exempt employer has filed for bankruptcy and the exempt employee is listed as an unsecured creditor of the voluntarily exempt employer because of the judgment or court order described in subdivision (c)(2).

50-6-1005.

The commissioner of commerce and insurance shall promulgate, by rule, the procedure by which an exempt employee may request payment of a judgment or court

order described in subdivision (c)(2) from the security bond held by the commissioner of commerce and insurance pursuant to § 50-6-1004.

50-6-1006.

(a) Any legal action to enforce the payment of the security bond being held by the commissioner of commerce and insurance pursuant to § 50-6-1004 shall be brought by the commissioner of commerce and insurance for the benefit of the exempt employee who has a judgment or court order described in subdivision (c)(2).

(b) The security bond being held by the commissioner of commerce and insurance pursuant to § 50-6-1004 may be used for payment of any and all fees or costs required to administer the disbursement of the proceeds by the commissioner of commerce and insurance to or for the benefit of any exempt employee.

50-6-1007.

(a) In addition to the requirements of §§ 50-6-1003 and 50-6-1004, an employer who voluntarily elects to be exempt from this chapter shall:

(1) Establish an injury benefit plan that complies with the federal Employee Retirement Income Security Act of 1974, that, at a minimum, pays the medical expenses incurred by an exempt employee as a result of an injury sustained in the course and scope of his employment by the voluntarily exempt employer without regard to fault;

(2) Provide to each exempt employee a summary of the benefits provided by the injury benefit plan described in subdivision (a)(1); and

(3) Certify to the division that an injury benefit plan described in subdivision (a)(1) has been established, and provide to the division the information necessary to document the establishment of such injury benefit plan.

(b) The division is authorized to promulgate rules and regulations to govern the manner by which the voluntarily exempt employer complies with subdivision (a)(3). All such rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 7. The division of workers' compensation of the department of labor and workforce development and the commissioner of commerce and insurance are authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 8. This act shall take effect on July 1, 2011, the public welfare requiring it.